

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 873 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAJU RAMLU DHOBI

Versus

STATE OF GUJARAT

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Appearance:

MR HN JHALA for Petitioner

MR SA PANDYA APP for Respondent No. 1

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/06/98

ORAL JUDGEMENT

In this criminal appeal, the appellant herein/ original accused has brought in challenge the judgment and order dated 19.5.1995 recorded by the learned Additional Sessions Judge, Surat in Sessions Case No. 183 of 1994 whereby the appellant/original accused was convicted of the offence punishable under Section 20 (b) (i) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act' for short) and

sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default to undergo simple imprisonment for further six months.

The prosecution case in nut-shell is as under:

The complainant, Police Sub Inspector, F. K. Makwana, at the relevant time was working at Railway Police Station, Surat. On 23.8.1994, he, in company of Police Constables Rameshkumar Sanatsinh, Nanubhai Narsinhbhai and Aniruddhsinh Karshanbhai, was watching trains during night hours. At about 2.30 A.M. Okha-Puri train came at Surat Railway Station. At that time they noticed a person, near the water room, carrying one bag on his right shoulder and a suitcase in his left hand. On suspicion, they detained him and made inquiries about him. On inquiry it was revealed that he was Raju Ramlu Dobhi, resident of Ashoknagar Hutments, Katargam GIDC and originally belonged to Rampalli, Vijaynagar, Hyderabad. The police personnel thereafter inquired about the contents of the suit case and hand bag. During the inquiry he was found frightened and unable to reply satisfactorily. Therefore, the complainant, P.S.I. F.K. Makwana called two panchas and in presence of panchas the accused was searched. On the search, from the hand bag, one packet of ganja weighing 5.500 Kgs. and from suit case two packets of ganja weighing about 12 kgs. were found. Thus, in all about 17.500 Kgs. of ganja was found from the accused. From each packet, two samples each of 300 grams were drawn, the same were packed in separate plastic covers and signatures of panchas were obtained and seal of Sub Inspector, Government Railway Police, Surat was affixed. The total value of ganja was estimated at Rs.17,500/- Panchnama regarding search of the accused person was made. PSI Makwana lodged complaint and the accused was arrested. The samples drawn were sent to Forensic Science Laboratory for analysis. Analysis report indicated that the samples sent for analysis were ganja. On receipt of the analysis report and on completion of the investigation, the accused was charge-sheeted for the offence punishable under Section 20 (b) (i) of the Act, in the Court of the learned Sessions Judge, Surat. The learned Sessions Judge framed charge against the accused which was read over and explained to him. He pleaded not guilty to the same and claimed to be tried.

In order to bring home the charge levelled against the accused, prosecution examined in all six witnesses and also placed reliance on the relevant documents. Thereafter the learned Judge recorded statement under

Section 313 of the Criminal Procedure Code ('the Code' hereinafter).

After recording the evidence of the prosecution witnesses and appreciating the same, the learned Additional Sessions Judge recorded finding of conviction for the offence punishable under under Section 20 (b) (i) of the Act and awarded sentence as aforesaid. By filing the present appeal, this order of conviction and sentence is impugned before this Court.

Mr. H.N. Jhala, learned advocate appearing on behalf of the appellant/accused, while arguing, in all his fairness conceded that he has no case so far as recording of finding of conviction is concerned. However, he has strenuously submitted that so far as imposition of sentence of five years rigorous imprisonment and fine of Rs.10,000 is concerned, it is harsh. According to him, this is the maximum sentence prescribed under the Act and hence this aspect is required to be viewed leniently. In short, he urged this Court to take lenient view in the matter. He has also pointed out that the accused was arrested on 23.8.1994 from the Surat Railway Police Station and since then he is in jail. The accused is on the verge of completing four years in jail. He has already undergone about 3 years and ten months in jail. Therefore, looking to the gravity of the offence, sentence may be suitably reduced, that is, the sentence undergone may be treated as sufficient sentence to meet the ends of justice.

In counter submission, learned A.P.P. Mr. Pandya with all vehemence at his comment tried to emphasis that persons dealing in narcotic drugs are menace to the society. Their act kills the youth of the country. Therefore, the accused was rightly dealt with by the trial court and hence awarding of sentence and imposition of fine is concerned, it is not required to be viewed leniently. He, therefore, submitted that the stringent view taken by the learned Additional Sessions Judge, does not require interference by this Court and on the contrary it requires affirmation to set an example in the society so that the activities of the persons dealing in narcotic drugs who are menace in the society can be curbed. He, therefore, prayed that the appeal may be dismissed.

I have given my anxious and considerate thought to the rival contentions raised by the learned advocates. It is true that offence under Section 20 (b) (i) of the Act is punishable with rigorous imprisonment for a term which

may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees. Therefore, the intention of the legislature was to award maximum sentence of five years to the offenders dealing in ganja or cultivation of cannabis plant. It is also equally true that where the contravention relates to cannabis other than ganja, the offence is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees. In short, the legislature in its wisdom thought it fit to deal with the offenders dealing in ganja not so stringently or strictly as the offenders dealing in narcotic drugs other than ganja. When the maximum sentence prescribed by the legislature is five years that does not mean that in every case maximum sentence should be imposed on the accused who is found guilty to the offence. Of course, awarding of sentence is the discretion of the Judge concerned who conducts the trial. There must be some reason to impose the maximum sentence. The case on hand is not a fit case for imposition of maximum sentence. Prosecution has not produced any evidence to show that the accused is a habitual offender and he did the same act in past also. It is also required to be noted that since his arrest the accused is confined to jail and, therefore, he has already undergone sentence of three years and ten months by now. Under the circumstances and in exercise of powers conferred upon this Court under Section 386 (b) (iii), I am of the opinion, that the sentence imposed on the accused is required to be reduced by one year and fine is also required to be reduced by Rs.5,000/- which would meet the ends of justice.

Resultantly, this appeal is partly allowed. The judgment and order of conviction recorded by the learned trial Judge is confirmed. However, the sentence of imprisonment imposed by the learned trial Judge is reduced by one year and the fine imposed is reduced by Rs.5,000/- In the facts and circumstances of the case, the appellant/accused is ordered to suffer R.I. for four years and to pay fine of Rs.5,000/- and in default to further undergo S.I. for six months for the offence under Section 20 (b) (i) of the Narcotic Drugs & Psychotropic Substances Act, 1985. Muddamal is ordered to be disposed of as per direction given by the learned trial Judge.